

This decision was not selected for publication in the New Mexico Appellate Reports. Please see Rule 12-405 NMRA for restrictions on the citation of unpublished decisions. Please also note that this electronic decision may contain computer-generated errors or other deviations from the official paper version filed by the Supreme Court and does not include the filing date.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

Opinion Number: _____

Filing Date: May 30, 2013

NO. 33,792

STATE OF NEW MEXICO,

Plaintiff-Petitioner,

v.

**AMERICAN FEDERATION OF
STATE, COUNTY, AND MUNICIPAL
EMPLOYEES COUNCIL 18, AFL-CIO,
CLC, and COMMUNICATION WORKERS
OF AMERICA, AFL-CIO, CLC,**

Defendants-Respondents.

**ORIGINAL PROCEEDING ON CERTIORARI
Alan M. Malott, District Judge**

Rodey, Dickason, Sloan, Akin & Robb, P.A.
Thomas L. Stahl
Edward R. Ricco
Albuquerque, NM

1 for Petitioner

2 Youtz & Valdez, P.C.
3 Shane Youtz
4 Stephen Curtice
5 Albuquerque, NM

6 for Respondent

7 **DISPOSITIONAL ORDER OF AFFIRMANCE**

8 {1} This certiorari petition having come before the full Court, and each member of
9 the Court having studied the briefs, engaged in oral argument, and being otherwise
10 fully informed on the issues and applicable law; and

11 {2} The Court of Appeals having issued a formal Opinion in this matter, *State v.*
12 *American Federation of State, County, and Mun. Employees Council 18*, 2012-
13 NMCA-114, _P3.d _, with which we agree and which sufficiently analyzes and
14 resolves the principal issues in this case; and

15 {3} The members of the Court having concurred that it would better serve the
16 public interest to file this Order of Affirmance now, rather than subject the parties and
17 the public to the inevitable delay that accompanies a formal Opinion; and

18 {4} The members of the Court having concluded that there is no reasonable
19 likelihood that a Decision or Opinion from this Court would materially advance the
20 law of this State; and

21 {5} The members of the Court having agreed to invoke this Court's discretion under

1 Rule 12-405(B)(3) NMRA to dispose of a case by order, decision or memorandum
2 opinion rather than formal opinion;

3 **IT IS THEREFORE ADJUDGED THAT:**

4 {6} Having enacted the Public Employees Bargaining Act (the Act), NMSA 1978,
5 Section 10-7E-1 to -26 (2003, as amended 2005), the New Mexico Legislature
6 authorized the State, acting by and through representatives of its Executive branch, to
7 negotiate and enter into binding contracts with representatives of organized labor,
8 acting on behalf of those state employees choosing to become union members, and
9 thereby to obligate the State, subject to legislative appropriation, to pay wages at the
10 negotiated level to those state employees covered by contract.

11 {7} As set forth more fully in the Court of Appeals' majority opinion, in 2005 the
12 State entered into contracts with organized labor pursuant to the Act and thereby
13 committed to future wages at specified levels for those state employees covered by
14 those contracts. Those contracts create binding obligations on the State and
15 enforceable rights in those state employees covered by contract, conditioned on
16 legislative appropriation.

17 {8} In 2008 the New Mexico Legislature appropriated sufficient funds to honor
18 those contracts for Fiscal Year 2009, covering the period July 1, 2008 through June
19 30, 2009. Following the 2008 legislative session and notwithstanding that

1 appropriation, the State Personnel Board took actions to allocate a portion of those
2 appropriated funds to purposes other than fulfillment of the State's contractual
3 obligations. The effect of this action was to deprive those state employees covered
4 by contract of sufficient funds to honor those contracts. Instead, the State chose to
5 provide increased wages to those employees *not* covered by contract who had no
6 contractual rights at the expense of those state employees who had enforceable
7 contractual rights.

8 {9} In doing so, the 2008 State Personnel Board, acting on behalf of the Executive
9 branch, breached the State's contractual obligations, and acted contrary to legislative
10 appropriation and to the Act. The rulings of both the district court and the Court of
11 Appeals correctly enforce the rights of those state employees covered by contract.
12 Accordingly those rulings are hereby **AFFIRMED** and these cases are remanded for
13 further action consistent with this Order.

14 {10} **IT IS SO ORDERED.**

15
16

PETRA JIMENEZ MAES, Chief Justice

17
18

RICHARD C. BOSSON, Justice

1
2

3
4

5
6

EDWARD L. CHÁVEZ, Justice

CHARLES W. DANIELS, Justice

BARBARA J. VIGIL, Justice